

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CHARLES ROWE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

V

AMANDA CHAFFEE,

Respondent-Appellant,

and

CHARLES ROWE,

Respondent.

UNPUBLISHED

October 3, 2006

No. 269388

Genesee Circuit Court

Family Division

LC No. 04-118532-NA

Before: White, P.J., and Zahra and Kelly, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g) and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in finding that the statutory grounds for termination of respondent-appellant's parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 344-345; 445 NW2d 161 (1989). The minor child, Charles, was deaf in one ear, and partially deaf in the other ear. The condition leading to adjudication, and the basis for the allegation of lack of proper care or custody, was respondent-appellant's neglect of Charles's educational and developmental needs in failing to enroll him in services designed meet his special needs. The initial disposition occurred on November 3, 2004, and more than 182 days elapsed between that time and the March 15, 2006 termination hearing.

During the year following the initial disposition, respondent-appellant did not regularly participate in Charles's classes through Early On or learn sign language, and thus remained unable to communicate with Charles and unable to address his special needs. Communication was basic and essential to effective parenting and to enabling Charles to make educational and developmental progress. The evidence showed that respondent-appellant also had unresolved

mental health issues. Given the fact that respondent-appellant did not address her own mental health issues and did not demonstrate a desire to become able to effectively parent Charles, the trial court did not err in determining that there was no reasonable expectation that respondent-appellant would become able to provide Charles with proper care or custody within a reasonable time. Since respondent-appellant remained unable to communicate with Charles, the evidence was clear that he would suffer harm if returned to her care.

Respondent-appellant argues on appeal that the agency failed to accommodate her bipolar disorder in its provision of services, and thus violated the Americans with Disabilities Act of 1990 § 2, 42 USC 12101, *et seq.* Respondent-appellant did not raise this issue in the trial court. A claim that the agency violated that Act must be raised well before a dispositional hearing regarding termination of parental rights, and failure to timely raise the issue constitutes a waiver. *In re Terry*, 240 Mich App 14, 25-27; 610 NW2d 563 (2000).

Affirmed.

/s/ Helene N. White
/s/ Brian K. Zahra
/s/ Kirsten Frank Kelly